

Service Date: February 7, 1994

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER Of the Application )	TRANSPORTATION DIVISION
of Terry N. and Frieda J. Stephens )	
dba FJ's Mobile Home Service, )	
Libby, MT for a Montana Intrastate )	DOCKET NO. T-93.96.PCN
Certificate of Public Convenience )	
and Necessity. )	ORDER NO. 6271

**FINAL ORDER**

APPEARANCES

FOR THE APPLICANT:

Donald L. Shaffer, 502 Main Street, Libby, Montana 59923

FOR THE PROTESTANTS:

David W. Harman, 120 West 6th Street, Libby, Montana 59923,  
representing Montana Mobile Home Transport, Inc.

FOR THE COMMISSION:

Denise Peterson, Staff Attorney and Wayne W. Budt, Transpor-  
tation Division Administrator, 1701 Prospect Avenue, P.O.  
Box 202601, Helena, Montana 59620-2601

BEFORE:

BOB ROWE, Vice Chairman & Hearing Examiner

BACKGROUND

1. On July 22, 1993 Terry N. and Frieda J. Stephens, dba FJ's Mobile Home Service (Applicant or FJ's) filed an application with the Montana Public Service Commission (Commission) for a Class B Certificate of Public Convenience and Necessity to transport mobile homes between all points and places in the State of Montana. The application proposed to amend FJ's existing Class B certificate PSC No. 9261 which authorizes mobile home transportation between all points and places within Lincoln, Flathead, Sanders, Lake and Glacier Counties.

2. Mr. and Mrs. Howard Pape, Jr. filed a protest of the application on the ground of fitness on August 5, 1993. The Papes alleged that FJ's had moved their trailer in May, 1993 causing major damage.

3. The Commission duly published notice of the public hearing. The Commission received a Late Motion to Intervene from Montana Mobile Home Transport, Inc. (Mobile Home), Billings, Montana, which has statewide authority to transport mobile homes.

The Commission granted intervention at its regularly scheduled meeting held September 20, 1993.

4. Bob Rowe, vice chairman and hearing examiner, conducted the public hearing on September 29, 1993 in the County Annex Building, 418 Mineral Avenue, Libby, Montana. Mobile Home was

granted the status of Protestant over the objection of counsel for Applicant. The hearing examiner decided to take the testimony of Mr. and Mrs. Pape as public witnesses. Protestant and Applicant stipulated to a final order at the conclusion of the hearing.<sup>1</sup>

#### SUMMARY OF TESTIMONY

##### Public Testimony

5. Misty Lynn Pape, Libby, Montana, appeared and testified opposing the extension of operating authority statewide. She questioned the fitness of FJ's to operate within its present service area. According to her testimony, she and her husband hired FJ's to move their trailer and the operation resulted in \$6,000 - 7,000 damage to the trailer and addition. Damage allegedly occurred during forklift operations. When loading the addition onto the trailer, a hired forklift operator picked up and broke support beams and tore the wall away from the flooring.

FJ's indicated it could put it together but did not know how to bolt the addition together for transportation. Five days later Terry Stephens let the Papes' father-in-law drive FJ's unlicensed

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<sup>1</sup> In this Order, witnesses refer to either "trailer" or "mobile home." The text states their testimony accurately.

truck, with \$50 off the price negotiated. Two days later, FJ's, in finishing the job, broke out windows, did not hook up the sewer and did not finish the job inside, Mrs. Pape testified. Mrs. Pape stated that FJ's insurance policy would not cover knock down and set up damages. Under cross-examination she said that FJ's truck that her father-in-law drove did not have working lights, the bearings were going out of the wheels and it was low on gas. Under the statement, FJ's charged more for moving the addition than moving the trailer.

6. Dawn C. Halsey, Libby, Montana, appeared and testified as a member of the public with concerns about FJ's service. She is a single person holding down two jobs and was unable to monitor the move. She trusted FJ's to move her trailer and took their word that they would help. The "ad" in the paper said FJ's was bonded and insured. Ms. Halsey sponsored as an exhibit pictures showing a hole in the front of the trailer allegedly resulting from a turn during the move. FJ's had trouble getting the additions down and damaged the additions. When set up, the additions did not match the trailer and rainstorms now come through. FJ's never did hook up the water or turn on the electricity. She testified that she has had experience moving a

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Therefore, there will not be one consistent term.

trailer before with her brother-in-law, and they never dropped the trailer during the move, as did FJ's.

7. Georgia L. Carr, Wayne Hartmann and William Journot, all of Libby, Montana, appeared and testified as members of the public satisfied with FJ's service in moving trailers. FJ's moved Ms. Carr's trailer from Kalispell to Libby and did an efficient job. The trailer is in and level, with no damage. When she contacted other movers in Kalispell, she was told it would be ten days to two weeks before they could do the move.

8. Mr. Hartmann owns four mobile home parks in Libby. He has had FJ's haul many homes with no problems, including set up of a double wide. He finds it more convenient to have a hauler in the area. In using other movers, Mr. Hartmann has found that some may say they will move in a week, but it takes a month. He has had no such problem with FJ's.

9. Mr. Journot testified that FJ's moved his mobile home down a very narrow driveway and parked it exactly where he wanted it.

10. David Strand, Libby, Montana, appeared and testified as a member of the public. He has never had a trailer of his own moved. However, one month earlier, FJ's moved a friend's 16' x 80' from Deadwood, South Dakota in two days. Mr. Strand piloted

along with Scott Cregg. Mr. Stephens (FJ's) drove; he got the permit in Sundance and had to show proof of insurance. Mr. Strand never saw anyone move a trailer better. He had called two places in Kalispell and never received a return call or a quote.

11. Mr. Strand has had a trailer court, or mobile home park, for eight years. He has observed that people have trouble getting moved from Kalispell and have to wait a month. One month before he bought a trailer in Rexford, Idaho and it took a month to get it moved by a Kalispell mover. Mr. Strand's mobile home park has a good occupancy rate; only one has moved out in some-time. He owns six trailers, which he brought in himself.

12. Rita Lynn, Libby, Montana, appeared and testified as a member of the public. Ms. Lynn is the mother of Georgia Carr (¶7). The Papes (¶5) purchased their trailer from Ms. Lynn. She attested that FJ's did no damage to the trailer itself and that there was no bent frame. The landlord had told her that the addition had sat for at least 18 years in the same place. She also asserted that the addition did not stay in the yard for five days as Mrs. Pape stated.

13. Howard Pape, Sr., Libby, Montana, appeared and testified in corroboration of the Papes' claims. (See ¶5.) Mr. Pape admitted that on the Friday in question he drove the unlicensed

truck with the additions on, as Misty Pape testified. Mr. Pape testified that Terry Stephens did not want to drive the unlicensed truck. Howard Pape, Jr., also appeared and testified. He stated that a lower estimate should not mean a lower quality of service. He observed that those who bought big mobile homes from Babe's were treated with respect, while those buying older homes were not.

#### Applicant's Witnesses

14. Merwin "Babe" Wagner, Libby, Montana, appeared and testified in support of the application. He has operated Mobile Home Sales for 12 years, selling mostly used homes. He has trailers moved six or more times a month from as far away as North Dakota, South Dakota, and eastern Montana. In the last six months, he needed four moves from Baker and two from Shelby. To do hauls, he had relied in the past on Ken Strandberg who died. He gave up on another "local fellow" who was undependable (since died). Mr. Wagner testified that he had not known about FJ's when he attempted to find a hauler for a double wide. He called Kim Kachyk but his truck was wrecked; he called Morgan Transit without results. Aaron Mobile Home Service reluctantly gave FJ's number because they wanted to do the job but could not get to it

for two weeks. FJ's quickly did a good job under lease to another carrier. Mr. Wagner talked FJ's into permanently relocating. FJ's has moved 11-13 trailers for Babe's, always does a good job and is always available. Mr. Wagner stated that FJ's equipment is adequate for the job. Mr. Wagner testified that FJ's has made moves for him from eastern Montana. He prefers to obtain trailers in-state for titling reasons.

15. Frieda J. Stephens, Applicant and owner of FJ's, appeared and testified in support of the application. She has been in the trailer-hauling business for four years. She and her husband Terry moved to Libby in December and worked for Transit Homes. Before then, they operated in Washington State. They have ICC authority and have hauled homes from South Dakota and North Dakota for Babe. They have hauled 13 homes from Libby to Washington State. A lot of people are moving from Libby to Washington and Idaho, she testified. Ms. Stephens testified that she receives a lot of calls for moves to Missoula and Billings.

16. Ms. Stephens testified that FJ's equipment includes a 1970 Freightliner used until now, a 1976 Kenworth just purchased, an as yet untitled Ford toter, a Dodge bought to use for parts, and two to three complete sets of adjustable axles for different sized homes. Before FJ's obtained ICC authority, they leased to



a friend with authority. Since receiving the authority in March, they have moved between 40-50 homes.

17. Regarding Ms. Halsey's complaints, Ms. Stephens said that she had no contact from her. She did not know anything was wrong. She had paid \$300 and owed a balance. When the balance was paid, Ms. Stephens said they would take care of the remaining problem.

18. Ms. Stephens testified that the Papes were leaving town for three days during the time of the move in May. There was no electricity hooked up at the site the trailer was moved to. The site was too high to get in a two ton truck. At first Papes said they had a truck to move the addition, then did not. It took two days before Libby Redimix could get the addition off the trailer.

They explained to Ms. Pape that they would fix the window and stripping. They did not bid in flashing, however. Ms. Stephens testified that the Papes' complaint for damages escalated from the cost of the move plus \$100 to a \$6,000 claim for the addition. The matter was dismissed without prejudice.

19. Ms. Stephens admitted to two moves outside FJ's authority: one to Bozeman and a home back from Ekalaka to Libby. The business is a sole proprietorship in her name, since August 26, 1993. The trucks are not DOT certified but are locally inspect-

ed. FJ's had an equipment breakdown in Billings and another bringing a home from North Dakota. FJ's had to run its freightliner until the Kenworth was cut down to a toter. Frieda Stephens does not drive trucks; Terry Stephens has the license. Of the two trucks, one is registered to Terry and Frieda. The freightliner is registered in Terry's name.

20. Concerning the illegal move to Bozeman, Ms. Stephens testified that the owner had tried every other company. He had to be at the University in Bozeman by Wednesday. FJ's had already filed an application for statewide authority with the PSC and believed the authority would go through the way their initial authority for the five counties had. So, FJ's decided they would make the move. Within 60 miles of Libby, they had blown two to three tires. They did not have their own axles. They had to take his off and put new ones in, which was not part of the original bid. They tried to get another hauler to do the move. Upon contacting the PSC, they were told that they would get a fine if they made the illegal move, but they would be in bigger trouble if they left the trailer stranded. They went ahead without the authority.

21. Testifying about the illegal move from Ekalaka ten days before the hearing, Ms. Stephens said that Mr. Wagner could not

get anyone else to do it. FJ's truck had already left when they received notice of the protest. They had believed they would have the authority. The truck itself did not break down, but an axle broke on the trailer. They left the trailer on the side of the road overnight and went to get parts.

22. Ms. Stephens also admitted that they had brought a trailer back from outside Shelby. She said that it was so close to the line that they had not been sure, but the movement permit did say Toole County.

23. On other matters, Ms. Stephens testified that FJ's has no employees and does not pay workers' compensation. FJ's pays \$3,297 for insurance premiums to cover the mobile home movements.

She said that she had called Kalispell and Missoula and could not get anyone to do moves. There was a broker in Hardin who could not find anyone to move mobile homes after calling Billings and Missoula, she testified. For a move to Lolo and Missoula, Kim's telephone was busy. She did not consider it her responsibility to get movers, she asserted. Three shippers called who wanted trailers moved to eastern Montana and another wanted a move to Missoula. FJ's receives two to four calls a month wanting a move to Missoula, Billings or out of state.

24. Terry Stephens, Applicant and driver for FJ's, also

appeared and testified in support of the application. He said that he is a co-proprietor but the business is incorporated in his wife's name for estate purposes.<sup>2</sup> He testified that he tried to find other movers. Four times he called Kim for a quote and no one returned the calls to the "800" number. In the last six months, he said that they receive inquiries on moving trailers two times a week ("How much to move mine?"), many to the eastern part of the state. Any time when moving mobile homes, there is more risk during the tear down and set up, he said.

25. Mr. Stephens testified that the equipment has not been DOT inspected, but he thinks the trucks would pass inspection.

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<sup>2</sup> Applicants are directed to file proper documents reflecting corporate ownership and a transfer for approval.

Protestant's Witnesses

26. Kim Kachyk, Kalispell, Montana, appeared and testified opposing the application as authorized by Montana Mobile Home Transport, Inc. (Mobile Home), Billings, Montana. Mr. Kachyk leases to Mobile Home, which holds statewide authority to move trailers. He submitted and testified on an exhibit which was an estimate of mobile home transporters in Montana. The exhibit showed 49 trucks available throughout Montana, located in 10 cities.

27. Mr. Kachyk had been in the business of moving mobile homes for four years, full time for two years. He provides service to the Libby area. Before FJ's came to Montana he went to Libby once or twice a week, but now it is once every two months. Mr. Kachyk testified that he got Terry Stephens to come to the area after Mr. Kachyk hit a deer and totalled his vehicle. At that time Mr. Kachyk was leased to Transit Homes of America. FJ's then leased to Transit Homes. Since FJ's commenced operating there has been a decrease in business. There are also now three more trucks in the Kalispell area, all with statewide authority. If statewide authority is granted to FJ's, it would have a detrimental impact on Mr. Kachyk's business. He does not get that many hauls out of the Kalispell area. Two day moves pay

well; he would lose \$1,000 - 1,300 per move. Mr. Kachyk also sponsored his calendar as an exhibit. On a good day he can do three to five moves per day. However, he has had a number of full days available to move trailers since July, although August through October are normally the best months of the year for moving trailers. Mr. Kachyk said that the calls he got from FJ's related to a trailer that "broke down." He found it advisable not to call back to rectify FJ's problems or assume its liability. He had no other calls from FJ's or Babe's.

28. Kent R. Keeler, Billings, Montana, owner of Montana Mobile Home Transport, appeared and testified in opposition to the application. He stated that there is not enough business statewide to warrant another truck -- the ones they have cannot stay busy enough. Mobile Home itself has five "floaters" and has had no need to use one. Mr. Kachyk had to sell a truck to dealers for factory runs, according to Mr. Keeler. Most dealers have their own trucks, or else the manufacturers do the transporting to the dealers' sites. Those in the business are doing the best they can, but are not staying as busy as they should.

#### FINDINGS AND DISCUSSION

29. Pursuant to Title 69, Chapter 12, Montana Code Annotat-

ed (MCA) the Commission supervises and regulates intrastate motor carrier service. § 69-12-201, MCA. The maintenance of an adequate common carrier motor transportation system has been declared a public purpose. § 69-12-202, MCA. To obtain motor carrier operating authority requires an application to the Commission and a hearing whenever a protest is filed or a request for a hearing is received. § 69-12-321, MCA.

30. Section 69-12-323, MCA, governs the requirements for a Commission decision on whether an application for a certificate should be granted. The Commission will issue a certificate of public convenience and necessity upon finding that the proposed service is required. In reaching a decision, the Commission will consider existing transportation service; the likelihood of the proposed service being permanent and continuous 12 months of the year; and the effect of the proposed service on other essential transportation service in the affected communities.

31. The Commission has interpreted § 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

- a. Is the applicant fit and able to perform the proposed service?
- b. Does the public convenience and necessity require the

authorization of the proposed service?

- c. Can and will existing carriers meet the public need for the proposed service?
- d. Would the proposed service have an adverse impact on existing transportation service?

32. The Commission makes a threshold determination of whether the applicant is fit, willing, and able to provide the service, considering these factors: (1) the financial condition of the applicant; (2) the intention of the applicant to perform the service sought; (3) the experience of the applicant in conducting the service sought; (4) the adequacy of the equipment the applicant has to perform the service; and (5) the nature of previous operations, if there are allegations of illegal operations.

#### Fitness

33. Applicant(s) and public witnesses raised the issue of FJ's fitness to move mobile homes on a statewide-basis. Public testimony was contradictory on the quality of FJ's service. Applicant admitted that the equipment is relatively old, not DOT inspected, and that Mr. Stephens has made illegal moves. On a number of moves the equipment broke down, or there were no



substitute axles, requiring abandonment of trailers. Undertaking illegal moves by itself could support a finding of unfitness. Complicating the matter, FJ's has not filed proper documentation of ownership and is operating on an authority different from the testimony and application.

34. The Commission will not engage in the full analysis on whether FJ's is fit based on illegal moves. The Commission admonishes FJ's that any future operations exceeding its authority will be subject to fines and penalties pursuant to the Commission's enforcement powers. Although FJ's has ostensibly made successful interstate moves under its ICC authority or by lease, it appears to have problems when it has made illegal intrastate moves. The Commission finds that the five county area of its existing authority, plus its ICC authority, should provide FJ's adequate challenge before it undertakes additional territory.

Public Need and Convenience

35. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936).

The question in substance is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. at 203.

36. The public need to meet in an application for a certificate of public convenience and necessity is shipper need. The Commission finds that the only bona fide shipper testifying was Mr. "Babe" Wagner, owner of "Babe's." Mr. Strand owns a trailer park and some mobile homes, but he has moved his own trailers. His park has stable occupancy and few moves.

37. Babe's buys and sells mobile homes and does need to have these units moved. Mr. Wagner's preference to use FJ's for statewide moves, however, does not rise to the level of a need which cannot be met as well by carriers with existing statewide authority. FJ's claims that it has been unable to get a return call from licensed carriers. Mr. Kachyk refutes this claim, in

part, by saying that the only calls he got were to rescue FJ's when it broke down. The Commission finds that there are an abundance of mobile home movers with statewide authority which can meet the need. Further, one more statewide authority would harm the operations of existing carriers such as Protestant, contrary to the public interest. Therefore, the Commission finds that the application should be denied.

#### CONCLUSIONS OF LAW

38. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

39. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to the Montana Administrative Procedures Act (MAPA) requirements for contested case procedures. §§ 2-4-601 et seq., MCA.

40. An applicant for a certificate of Class B operating authority to transport mobile homes statewide must show that the public convenience and necessity require the proposed service. § 69-12-323, MCA.

41. Applicant has failed to demonstrate a public demand or

need for the proposed service which existing carriers cannot meet. Further, granting this application would have an adverse effect on existing carriers.

42. Since there is no public need for an additional authority at this time, the Commission will not address the issue of fitness of the Applicant.

ORDER

NOW THEREFORE IT IS ORDERED that the application of FJ's Mobile Home Service for a Class B Certificate of Public Convenience and Necessity between all points and places in the State of Montana is DENIED.

FJ's Mobile Home Service is further ordered to file proper documentation reflecting corporate ownership and an application to approve the transfer to the corporation.

Done and Dated this Sixth day of January, 1994 by a vote of  
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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ANDERSON, Chairman

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BOB ROWE, Vice Chairman  
(Concurring - Attached)

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DAVE FISHER, Commissioner

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NANCY MCCAFFREE, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

**OPINION OF COMMISSIONER ROWE**  
**(Docket No. T-93.96.PCN)**

Where an individual commissioner serves as hearings officer for the entire Commission, with the decision ultimately made by the Commission as a whole, it is generally appropriate that the decision presented to the Commission for its approval be consistent with the Commission's established policies. This may be especially true where the parties stipulate to a final order, rather than reserving their right to file exceptions to a proposed order before the Commission issues its decision. Therefore, I reserve my individual views for this separate opinion, and set out my preferred bases for reaching the decision.

I believe the key factors in most transportation cases should be the fitness of the applicant and need for the service proposed. I would place less emphasis on the prospective ability and willingness of existing carriers to meet that need and on adverse impacts of the proposed service on existing carriers.

In this case, significant questions remain unresolved concerning the applicant's fitness. Concerns about the adequacy of the applicant's existing service should be fully addressed before the scope of that service is expanded.

Further, the applicant sponsored only one witness with a direct shipper need, Babe Wagner. I believe a shipper's preference for a locally-based carrier is an important factor which

should be considered by the Commission. However, one witness is insufficient to support an application for statewide authority.

I would rest a decision denying the application on these two elements, without reaching the "other carrier" elements. This would better permit the applicant to address concerns about its operations and file a new case, adequately supported by shipper witnesses which will use the service proposed. (Administrative decisions are not res judicata, but differing decisions may appear arbitrary.) Within statutory and judicial constraints, transportation regulation should focus primarily on the public's needs and the applicant's ability to meet those needs.

RESPECTFULLY SUBMITTED this Eleventh day of January, 1994.

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BOB ROWE  
Vice Chair